


May 5, 2009

MANAGEMENT DIRECTIVE # 3

TO: Senior Management Team for Recovery

FROM: Dempsey Benton, Director 
Office of Economic Recovery and Investment

SUBJECT: Contract Provisions for the Procurement of Goods, Services and Construction Projects Including Design Services and Internal Procurement Directives

In order to promote uniformity across all public entities using recovery funds in North Carolina, the attached Contract Provisions (Attachment 2) must be included as a part of any solicitation document for the procurement of goods, services and construction projects including design services for which recovery funds will be used as payment in part or whole. Likewise, the attached Internal Procurement Directives (Attachment 1) also must be adhered to when using recovery funds. This information will be provided to the Division of Purchase and Contract for dissemination to State agencies, the University System Community Colleges Public School Systems and local unit of government procurement offices. Attachment 3 is the form on which reporting of HUB information must be submitted.

Additionally, this information is not exhaustive. As further guidance is received from the Office of Management and Budget, and as conditions warrant, updates will be provided.

Attachments (3)

Cc: Charles Perusse, OSBM
David McCoy, OSC
James D. Staton, Jr., DOA
John Leaston, OERI
Zach Ambrose, Governor's Office

ARRA Contract Provisions and Management Directives Applicability

This Management Directive, Recovery Act Contract Provisions and Internal Directives are applicable to all state agencies, University System, Community Colleges, Public Schools System and local unit of government receiving recovery funds.

Compliance

All public agencies (state agencies, the University System, Community Colleges, Public School Systems and units of local governments) receiving recovery funds are hereby notified that the lack of compliance with management directives issued by the Office of Economic Recovery and Investment may result in one or more of the following actions:

- A request for compliance issued by the Recovery Office
- A referral to the Office of State Budget and Management Internal Audit Division
- A referral to the General Accounting Office
- A referral to the Office of Budget and Management
- A referral to the State Auditor Office
- A referral to other local, state or federal agencies having jurisdiction in the matter

Use of the Statewide Interactive Purchasing System (IPS)

The Statewide Interactive Procurement System will be used by all public agencies to list informal and formal solicitation documents if recovery funds or portions thereof will be used as payment for goods, services, and construction projects including design services. The words "Recovery Funds" shall be used in the description column of the IPS system to identify procurement opportunities that are using recovery funds as the method of payment. If you are not a current IPS user, please contact Judy Goldman in the North Carolina Division of Purchase and Contract at judy.Goldman@ncmail.net to receive instructions that will enable your organization to post solicitation documents electronically.

Local Newsprint Outlets

Public Agencies using recovery funds for the purposes of soliciting bids, proposals, construction projects, including design services exceeding \$5000 must advertise the opportunity in the local newsprint outlets including minority and women owned outlets.

Historically Underutilized Businesses (HUBs) Participation

"It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors, physically handicapped contractors, and women

contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.” NCGS 143-48(a). Contracts where recovery funds will be utilized should comply with this and all other applicable North Carolina statutes encouraging the use of historically underutilized businesses, including but not limited to NCGS 143-48 and 143-128.2, et set. Agencies using funds are required to use their best efforts to notify at least one HUB of the opportunity to participate by submitting a bid.

Establishing contracts using new procurement processes

Competition is the preferred method for obtaining goods, services and construction requirements using recovery funds. Recovery funds must not be used to purchase goods and services from existing term, convenience or agency specific contracts without the specific prior approval of the agency establishing the contract. Public agencies using recovery funds are expressly prohibited from expanding the scope of existing contracts to accommodate the purchase additional goods, service and construction projects or activities.

Fixed-Priced Contracts

Fixed-priced contracts (all inclusive type contracts) are the preferred method for using recovery funds to contract for goods, services and construction projects, including design services. Recovery funds shall not be used for any type of cost plus contracts or arrangements that provide a cost plus additional cost that may be listed as profit, overhead, direct/ indirect cost or other factors that will lead to an increase in the contract cost without unilateral agreement.

Use of Recovery Funds

Public agencies, contractors and subcontractors are specifically prohibited from using recovery funds for travel outside the service area or county in which the project is located. The exceptions are travel specifically mandated by the Recovery Act or approved by senior management of the agency executing the contract.

Reporting of Historically Underutilized Business (HUBs) Participation

State agencies contracting for goods, services and construction projects, including design services must report their utilization of HUBs as a percentage of total contract award using recovery funds. The information must be submitted by e-mail to: deborah.cannady@nc.gov by the 10th of each month on the attached form. This form may be accessed on the recovery.com or the North Carolina Division of Purchase and Contract website: <http://www.ncpandc.gov/> under the heading of utilization report. State agencies that are awarding contracts, grants or transferring recovery funds to other units of government must make this condition a requirement of the contract, award or transfer.

CONTRACT PROVISIONS

By submission of a proposal, Contractor agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor.

Reporting Requirements

The Contractor is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, "ARRA") Funds. The Contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

Posting with the Local Employment Security Commission

In addition to any other job postings the Contractor normally utilizes, the Office of Economic Recovery & Investment (hereinafter, "OERI") requires that the Contractor shall post with the local Employment Security Commission Office all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semiskilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Contractor and any Subcontractor shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing

in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General provision

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Buy American provision

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. Contractor agrees to abide by this provision and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies. The Contractor must obtain written exception from this provision from the agency issuing the contract.

Wage Rate Provision

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The contractor agrees that by the submission of a proposal in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the Davis-Bacon Act.

Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Whistleblower Provisions

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and

Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Outsourcing outside the USA without Specific Prior Approval Provision

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Anti-Discrimination and Equal Opportunity

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Office of State Budget and Management Access to Records

OERI requires that the contractor and subcontractor agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.

USE OF RECOVERY FUNDS REPORT FORM

SECTION 1: Contract Award

Contract Award for the month of _____, 20__

Service Contracts: \$ _____

Goods: \$ _____

Construction Projects: \$ _____

Design Services: \$ _____

TOTAL CONTRACT AWARD \$ _____

SECTION 2: Historically Underutilized Business Award

HUB Award for the month of _____, 20__

Service Contracts: \$ _____

Goods: \$ _____

Construction Projects: \$ _____

Design Services: \$ _____

TOTAL HUB CONTRACT AWARD \$ _____

Please return this form to:

**Deborah M. Cannady
Office of Economic Recovery & Investment
221 E. Lane Street
Raleigh, NC 27699-0308**

**Email: deborah.cannady@nc.gov
Phone: 919-733-1530
Fax: 919-733-2422**

